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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

MICROBES, INC., et al.,

Plaintiffs,

v.

THE ESPOMA COMPANY, et al.,

Defendants.

Case No. _____

(2:09-CV-237 (TJW) E.D. Tex.)

NON-PARTY BIO-CAT MICROBIALS,
LLC'S MOTION TO MODIFY SUBPOENA
(**Request for Oral Argument**)

Pursuant to LR 7-1, counsel hereby certifies that the parties have made good faith efforts through telephonic and electronic conferences to resolve this dispute and have been unable to do so.

BIO-CAT Microbials, LLC (**BCM**), a non-party to this proceeding, hereby objects to the production, inspection and/or copying of certain documents designated in the subpoena issued by Advanced Microbial Solutions, LLC (**AMS**) in the above-captioned matter to Organic Materials Review Institute (**OMRI**) dated July 20, 2010 (the "Subpoena") and moves this Honorable Court

to modify the Subpoena in accordance with Fed. R. Civ. P. 45(c)(3). As more fully set forth in its Memorandum of Law and accompanying exhibits as well as the Affidavit of Christopher Penet, the information sought is not relevant to any claim or defense in the underlying litigation, AMS cannot demonstrate the requisite "substantial need" for this confidential information, and given its highly confidential nature, BCM respectfully submits that it is unreasonable to require production of its proprietary information to its competitors under these circumstances. BCM further moves pursuant to Fed. R. Civ. P. 45(c) for sanctions including attorney's fees for responding to the Subpoena and filing this motion.

WHEREFORE, for the foregoing reasons and those set forth in its memorandum in support of its Motion, BIO-CAT Microbials, LLC respectfully requests modification of the Subpoena to preclude production of any files from Organic Materials Review Institute relating to BioStart Agricola, BioStart Defensor, BioStart RhizoBoost, and BioStart Nemata, and for its fees and costs incurred in pursuing this Motion and responding to the Subpoena and such other and further relief as this Court deems just and proper.

DATED: October 8, 2010.

WATKINSON LAIRD RUBENSTEIN BALDWIN & BURGESS, P.C.

By /s/ R. Scott Palmer
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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2010, I served the **NON-PARTY BIO-CAT MICROBIALS, LLC'S MOTION TO MODIFY SUBPOENA, NON-PARTY BIO-CAT MICROBIALS, LLC'S MEMORANDUM IN SUPPORT OF MOTION TO MODIFY SUBPOENA AND MOTION FOR SANCTIONS AND CORPORATE DISCLOSURE STATEMENT** by depositing a true, exact, and complete copies in the United States Post Office at Eugene, Oregon, enclosed in a sealed envelope, with first class postage prepaid and addressed to the parties at the addresses stated below:

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